

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

**STRATEGIC CONCEPTS IN ORGANIZING AND
POLICY EDUCATION (SCOPE)**

Employer

and

Case 31-RC-243370

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS
DISTRICT LODGE 947**

Petitioner

DECISION AND DIRECTION OF ELECTION

On June 14, 2019, the International Association of Machinists and Aerospace Workers District Lodge 947 (Petitioner or Union) filed a petition under Section 9(c) of the National Labor Relations Act (the Act) seeking to represent a unit including all full time and regular part-time Development Coordinators, Strategic Communications Associates, Training Associates, Research and Policy Associates, and Senior Organizers, and excluding all guards, managers, supervisors, office clericals and confidential employees.

On June 25 and 26, 2019, a hearing was held before a Hearing Officer of the National Labor Relations Board (the Board). During the hearing, the parties stipulated and agreed that the Petitioner is a labor organization within the meaning of 2(5) of the Act, the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to Board jurisdiction, there is no collective-bargaining agreement covering any of the employees in the unit sought in the petition, and there is no contract bar or other bar to an election in this matter. The parties also stipulated that the classifications of President/CEO and Director are supervisors as defined in the Act and are not at issue in this proceeding. The parties further stipulated and agreed that any unit found appropriate must include the following classifications: all full time and regular part-time Development Coordinators, Strategic Communications Associates, Training Associates, Research and Policy Associates, Communications Coordinators, Community Organizers, and Senior Organizers. Based on this stipulation, the Petitioner moved to amend the petition to add the Communications Coordinators and Community Organizers classifications to the petitioned-for unit (the unit), and I granted the motion. Finally, the parties stipulated that any unit found appropriate must exclude guards, managers, confidential employees, and supervisors as defined by the Act.¹

At the outset of the hearing, the issues to be litigated were set forth as follows: whether the employees in the petitioned-for unit shares a community of interest sufficiently distinct from

¹ The Petitioner, however, continues to assert that office clericals, including the Executive Assistant and Administrative Coordinator, should also be excluded from the unit.

the IT Manager, Administrative Coordinator, and/or Executive Assistant to warrant a finding that the petitioned-for unit constitutes a separate appropriate unit under *PCC Structural, Inc.*, 365 NLRB No. 160, slip op. at 7 (Dec. 15, 2017); whether these classifications should be excluded on grounds that the IT Manager is a technical employee, the Administrative Coordinator is a supervisor under the Act and an office clerical employee, and the Executive Assistant is a confidential employee. Near the end of the hearing, the Petitioner argued, for the first time, that the Administrative Coordinator is a confidential employee and the Executive Assistant is an office clerical employee, while ceasing to contend that the Administrative Coordinator is supervisor. Notwithstanding the Petitioner's position that the Executive Assistant, Administrative Coordinator, and IT Manager should be excluded from the unit on various grounds, the Petitioner stated that it would be willing to proceed to an election if I conclude that an appropriate unit must include any or all of these three classifications. The Petitioner and the Employer orally argued their positions prior to the close of the hearing.

As to the outstanding allegations at the end of the hearing, the Employer contends that the unit improperly excludes three classifications: Executive Assistant, Administrative Coordinator, and IT Manager. The Employer contends that these three classifications share a community of interest with the unit and should be included in any unit deemed appropriate. The Petitioner disagrees and contends that the petitioned-for unit is an appropriate unit and that the IT Manager, Administrative Coordinator, and Executive Assistant do not share a sufficient community of interest with the other classifications to require their inclusion in the unit. The Petitioner further argues that the Executive Assistant is an office clerical and confidential employee, the Administrative Coordinator is an office clerical and confidential employee, and the IT Manager is a technical employee, and that they should be excluded from the unit based on those grounds.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. For the reasons set forth below, based on the record and relevant Board law, I find that the Executive Assistant and Administrative Coordinator are not confidential employees. Further, I find that the employees included in the petitioned-for unit do not share a community of interest sufficiently distinct from the Executive Assistant, Administrative Coordinator, or IT Manager to warrant a finding that the petitioned-for unit is a separate appropriate unit. Accordingly, I shall direct an election in a unit that includes all classifications in the petitioned-for unit as well as Executive Assistants, Administrative Coordinators, and IT Managers.

I. FACTS

A. The Employer's Operation

The Employer, also known as SCOPE, is a non-profit organization engaged in providing community education and base building in low-income communities in Los Angeles. Base building refers to recruiting community members to be a part of the Employer's organization, either as dues-paying members, volunteers, and/or seasonal employees, as well as retaining such relationships. The Employer's mission involves representing low-income communities of color and highlighting their voices to implement policy changes.

The Employer has an executive management team (EMT) comprised of President and CEO Gloria Walton, Deputy Director Gloria Medina, Research Director Laura Muraida, and Organizing Director Jante Pruitt. The individuals on the Employer's EMT, as described below, oversee the existing departments, called components, which are engaged in carrying out the Employer's mission. The current components include the administrative component, organizing component, communications/research component, and training component.

The administrative component is comprised of President/CEO Walton, Deputy Director Medina, one Executive Assistant, one Administrative Coordinator, one IT Manager, and one Development Coordinator.² The administrative component staff, other than the President/CEO, attend meetings together as a component. The administrative component has a shared work plan applicable to all staff. The Executive Assistant, Administrative Coordinator, and Development Coordinator work in adjacent office spaces on the second floor of the building nearby to Deputy Director Medina's office. The IT Manager works on the first floor of the building where the servers and computer lab are located and is the only employee whose office is on that floor. As a general matter, some of the functions that the administrative component perform for the Employer include: office management; finance management; building maintenance and operations; and support for various organizing efforts in which the Employer is engaged pursuant to grants or other funding by handling logistical issues like room set-up and scheduling, by attending events, and by communicating with members of the public.

The organizing component is comprised of Director Jante Pruitt, one Senior Organizer, one Community Organizer, and one Leadership Development Coordinator.³ Organizing staff report to Director Pruitt, and on rare occasions when Director Pruitt is not available, staff report to Deputy Director Medina. The organizing component is involved in base building, grassroots leadership development, political education, campaign development, and fundraising. Members of the EMT decide what campaigns and issues the Employer will pursue and staff members work to implement those decisions.

Organizing component staff prepare members of the community to engage in canvassing, phone calls, and other outreach activities for the purpose of carrying out SCOPE's goals and missions. Organizers train SCOPE members to interface with community members about various initiatives and programs in which the Employer is involved and encourage individuals to become dues-paying members of SCOPE. In this way, organizers engage in fundraising for SCOPE. The Senior Organizer is responsible for developing SCOPE's messaging, talking points for members, outreach materials, maintaining the leads list, and ensuring that the organizing component follows up with leads and members. For some programs, SCOPE employs members of the community as seasonal employees when they are canvassing and doing outreach. Organizing staff are responsible for identifying and recruiting "leads;" leads are members of the community who are most interested in being a part of the organization. Organizing staff also

² There is conflicting evidence, discussed below, concerning whether the Development Coordinator is a part of the administrative component or a separate component called development.

³ The record suggests that at the time of the hearing, the Leadership Development Coordinator position was vacant.

engage in general recruitment efforts; for example, they personally go into the community and solicit pledge cards and train community members to do this task. They also provide transportation for members to and from various activities.

The organizing component often measures its results numerically in terms of how many members or leads are identified within a certain amount of time. These numerical metrics are provided to the outside entities that fund the Employer's programs. After the organizing component finishes its work on a program or campaign, staff perform an evaluation of the outcomes achieved to identify best practices and areas for improvement in the future. To achieve SCOPE's goals, organizing staff regularly ask community members and fellow SCOPE coworkers to attend certain meetings or neighborhood canvassing, on a volunteer basis, depending on what is needed to achieve program objectives/goals. Without volunteers, the organizing component has a hard time meeting its goals.

The communications/research component is comprised of Research Director Laura Muraida, one Communications Coordinator, one Strategic Communications Associate, and one Research Associate. This component manages and/or develops content for SCOPE's social media posts, website, newsletters, blogs, and communications that go to members. The communications/research component is involved in research and policy analysis, digital organizing activities, preparing members to testify publicly, and developing members' public speaking and storytelling skills.

The organizing component interacts frequently with the communications/research component. For example, the strategic communications associate shares with organizers the contact information of individuals in the community, then organizers get in touch with those individuals to inform them of events and remind them to vote. Staff of these two components also interact to share ideas on how SCOPE might highlight members' stories or a particular initiative so that this content can be featured on social media. Staff on the organizing and research/communications component also interact with the training component, comprised of one Training Associate. For example, the Senior Organizer once provided the Training Associate an introduction-to-organizing orientation. Also, the Training Associate, Senior Organizer, Development Coordinator, and Strategic Communications Associate have undertaken planning for a reading group with members to expand political consciousness, which is intended to be offered to members at some point in the near future.

On about a monthly basis, the Employer requires some, but not all, employees to attend a meeting called the program team meeting or program meeting. Program meetings are attended by the organizing component staff, communications and research component staff, the Training Associate, and the Development Coordinator. Other than the Development Coordinator, other staff in the administrative component rarely attend program meetings; more specifically, the Administrative Coordinator, IT Manager, and Executive Assistant have attended program meetings between approximately one and three times over the past year. Administrative staff have been present for program meetings when there is a goal of providing all staff with a basic understanding of the current programs and when the program team wishes to communicate updates on SCOPE's campaign work and upcoming activities.

Also on a monthly basis, staff across all components – including the disputed classifications in the administrative component – meet to share what they are working on, collectively review benchmarks, and brainstorm ways that staff within the components can support each other.

All non-supervisory staff share the same salary structure, benefits, and terms and conditions of employment which are set forth in an employee handbook.

B. Facts Regarding the Executive Assistant

The Executive Assistant reports to President/CEO Walton and Deputy Director Medina. The current Executive Assistant has worked for the Employer for about 11 years. The Executive Assistant has myriad responsibilities including, *inter alia*, answering the mainline phones at SCOPE; providing scheduling for the organization generally and the president/CEO specifically; making travel arrangements; handling accounts payable and mailing checks; ordering supplies for the organization; managing facilities/maintenance issues, like repairs to refrigerators; and providing logistical support for all internal and external SCOPE meetings.

The Executive Assistant is involved with the on-boarding process for new hires. She takes new staff on a tour of the building and makes sure they have access. This function is carried out in conjunction with the Administrative Coordinator, who shares in the onboarding responsibilities. At the EMT's direction, the Executive Assistant posts job descriptions for openings and forwards resumes to the EMT. The Executive Assistant is a point of contact for employees to find out how much time off they have accrued. The Executive Assistant and the Administrative Coordinator are tasked with processing requests for time off and notating the calendar accordingly.

The Executive Assistant is an account holder for the Employer's Facebook page. It is not clear how often this occurs, but whenever the communications/research team create content related to the President/CEO, communications staff will seek approval of the content by reaching out to the Executive Assistant, who then notifies the President/CEO and communicates on her behalf. The Executive Assistant does not decide what is posted on social media, but she occasionally makes suggestions based on her knowledge of what is occurring in the community. She also submits pictures from events to the communications component for posting on social media.

The Executive Assistant works with the communications/research component and the organizing component at least a few times per month to provide logistical support for all or most of their internal and external meetings and events. The Executive Assistant's responsibility is to coordinate logistics, including room reservations/rentals, room set up, ordering and providing supplies for the meeting, arranging language-translation services, and providing childcare and food. The Executive Assistant also works the registration table at events and occasionally provides transportation to events or to take people to a certain area for canvassing activities.

Cleaning up a room after an event or meeting is a collaborative effort and not the sole responsibility of the Executive Assistant.

One of the Employer's current programs is called emPOWER. This program consists of training community members, called the "street action team," to do door knocking or attend events to help community members ascertain if they qualify for various utility rebates, discount services, or other benefits from the Los Angeles Department of Water and Power. Individuals on the street action team are employed as seasonal workers when working on emPOWER. Deputy Director Medina is in charge of emPOWER, and the Executive Assistant is the lead on the program. The Executive Assistant trains community members on how to fill out applications using a tablet and answers any questions they have before canvassing. Staff in the organizing and communications/research components – specifically, the Senior Organizer and Communications Coordinator – also work on emPOWER by training the street action team to fill out applications on a tablet, developing the messaging that the street action team uses, and assisting with the identification of and following up with leads.

Since about mid-June 2019, the Executive Assistant has been responsible for dispatching the street action team on the four days per week that the team works. Dispatching involves monitoring attendance and making sure team members are prepared to go out into the community with all materials in hand and adequate water and snacks, and it sporadically involves driving individuals to the designated area/precinct. Two days per week, the Executive Assistant is the SCOPE employee present when the team returns to the office after close of business; on the other two days, a member of the organizing component, either the Senior Organizer or the Organizing Director, is present when the team returns. Being present when the team returns involves answering team members' follow-up questions and helping them input data into a computer based on their activities.

The Employer implements emPOWER pursuant to its relationship with an outside funding organization called Liberty Hill. When the Employer was beginning the emPOWER program, the Senior Organizer attended two trainings with Liberty Hill and the Executive Assistant attended one of these meetings. The Executive Assistant is responsible for being a point of contact between the Employer and the program manager at Liberty Hill and transmits information such as how many interactions the street action team has had, how many applications were collected, and the number of pledge cards.

SCOPE also implements a program geared toward sharing sustainability information with commercial properties and businesses. This is achieved by employing three seasonal employees, who are referred to as the commercial direct install team (CDI). The Executive Assistant is the lead for the CDI team. As such, she is the liaison between the team and the outside program funder, and she ensures that the team has everything they need to effectively work in the community, such as snacks, water, and materials. The Executive Assistant informs the CDI team what deliverables are needed to meet the requirement of the grant so that the team can work on achieving those numbers.

In addition to working on several of the Employer's programs, the Executive Assistant has also worked on individual events. For example, on May 11, 2019, the Employer held a sustainability summit attended by SCOPE staff, community members, and an ally organization. At an unspecified time prior to that, an ad hoc committee comprised of Deputy Director Medina, the Development Coordinator, the Senior Organizer, an Organizer, the Executive Assistant, and the Administrative Coordinator, managed the task of preparing for the summit.⁴ The Senior Organizer was responsible for tasks including reaching out to a reporter, developing the agenda for preparatory meetings, and creating a one-pager for community members on sustainability. The Executive Assistant worked to secure prizes to be used in raffles and food donations for the summit. The Executive Assistant was also involved with setting up the room and providing food, tabling at the summit, handling registration, and soliciting pledge cards; all SCOPE staff tabled at this event.⁵

The Executive Assistant also played a central role in the Employer's most recent annual membership drive. In anticipation of the drive, the Executive Assistant drafted invitations and corresponded with ally organizations, members, and outside funders to raise money and secure attendance at the membership-drive event. In performing these tasks, she worked with the Organizing Director to plan for the meeting and had some interactions with organizers as well. At the membership-drive event, the Executive Assistant was responsible for registering new members. In this regard, each SCOPE organizer is responsible for servicing a cluster of members, some of whom may pay SCOPE dues. During the membership drive and throughout the year, the Executive Assistant is the main point of contact between organizers and members to facilitate providing the member with a gift, such as a t-shirt or hat, that corresponds with the membership level. The Executive Assistant orders the gifts and follows up with members who did not receive a gift.

C. Facts Regarding the Administrative Coordinator

The individual currently working as the Administrative Coordinator has worked for the Employer since about August 2018.⁶ The Administrative Coordinator reports to Deputy Director Medina. The Administrative Coordinator's duties include onboarding new staff, handling accounts payable and submitting payment for bills, submitting payroll for salaried and hourly employees of SCOPE, creating budgets, and working with an accountant consultant to manage the Employer's budget. The Administrative Coordinator spends about two thirds of her worktime on accounting and budgeting, and one third of her time on duties related to human resources. Further, the Administrative Coordinator is often responsible, either individually or

⁴ The record does not reflect how many times the ad hoc committee met.

⁵ Tabling involves providing information about SCOPE and its mission to individuals who approach the table. On June 15, 2019, the Executive Assistant tabled at another event with three members of the street action team. Prior to these two tabling experiences, the Executive Assistant last tabled about 18 months to 2 years ago.

⁶ The record reflects that the individual previously employed as Administrative Coordinator possessed several duties and responsibilities, including being a part of the EMT and making management decisions, that the current Administrative Coordinator does not possess. Those managerial duties are now being performed by Deputy Director Medina, while the current Administrative Coordinator is not able to make management decisions.

together with the Executive Assistant, for ordering and receiving the food that is used at meetings.

With respect to onboarding, the Administrative Coordinator collects forms from employees that indicate their benefits elections and submits those forms to an insurance broker. She also collects forms reflecting employees' direct deposit authorizations and emergency contacts. She provides keys and a gate-opener/clicker to new employees. When employees leave the Employer's employ, the Administrative Coordinator completes an exit checklist that involves collecting keys and laptops and providing the final paycheck as well as information on insurance and benefits.

The Administrative Coordinator creates budgets for each component at SCOPE; she also creates budgets for specific grants and projects. The Administrative Coordinator works closely and shares information with the Development Coordinator/grant writer in drafting budgets. The information that goes into the budget includes costs of staff salaries and benefits, office supplies, food, childcare, and travel. To prepare a budget, the Administrative Coordinator may access SCOPE's historical budgets as well as AccuFund, an accounting program that is linked to bank accounts that the Employer has control over and reflects current available funds. When it comes to grants, the Development Coordinator writes the grant narrative and the Administrative Coordinator drafts the budget. The Administrative Coordinator submits budgets to the Development Coordinator and to the EMT for review. Usually, the EMT has suggestions to the budget, which the Administrative Coordinator will review and try to incorporate, often with the assistance of the contracted accountant. The President/CEO makes final decisions on the budget. If a grant is awarded to the Employer, the Administrative Coordinator receives the grant funder's check and approval letter and files these documents in the grant binder. The Administrative Coordinator logs and deposits checks payable to the Employer into the Employer's accounts.

The Administrative Coordinator has attended one HR management/support training and one accounting training. With respect to the HR management training, the Administrative Coordinator has not implemented and has not been asked to implement any of the tools, methods, or models that were taught during the training.⁷

Occasionally, organizers ask the Administrative Coordinator to provide information about the paycheck for a seasonal employee/member. The Administrative Coordinator also assists organizers with setting up for events and arranging language-translation services. On one occasion, the Organizer trained the Administrative Coordinator on how to canvass on behalf of SCOPE, then they both canvassed together on one or two days.⁸ The Administrative Coordinator has also phone banked for the Employer about three times. Further, the Administrative

⁷ The Administrative Coordinator has acted as a liaison between Deputy Director Medina and the IT contractor for the purpose of relaying directives on what IT tasks need to be done. The Administrative Coordinator follows up with the IT contractor to make sure the task was done currently. For example, at Deputy Director Medina's direction, the Administrative Coordinator asked the IT contractor to work on the internet downstairs and she also asked if the contractor had feedback on what was wrong with the internet connection.

⁸ The record reflects that this canvassing was voluntary, at least on the Administrative Coordinator's part.

Coordinator interacts with the organizing component with varying frequency; sometimes, the contact is infrequent, but during political campaigns and when organizers are heavily involved in voter education in the community, the Administrative Coordinator has contact nearly every day with organizing staff to ensure seasonal employees are paid and to secure language-translation services.

The Administrative Coordinator also engages in a back-and-forth with staff in the communications/research department when it comes to budgets for events and travel budgets. For example, the Administrative Coordinator worked with the Communications Coordinator to answer his questions about budgeting and/or how much money can be spent on different items.

The Administrative Coordinator attended the SCOPE sustainability summit in May 2019. She passed out food, kept track of food to make sure there was enough, and assisted with the raffles.

D. Facts Regarding the IT Manager

The IT Manager reports to Deputy Director Medina. The IT Manager is available to staff in all components to help resolve issues that arise with technology and equipment. Specifically, he prepares laptops, tablets, computers, and any other systems that staff need to work on a project; he provides troubleshooting on these systems and equipment; and he assists with ordering new equipment when there is a need. The IT Manager has provided orientation to SCOPE staff on how to use certain programs. For instance, he was the main source of information for staff on how to use a system called PowerBase, which tracks SCOPE's members and organizing activities. He has also troubleshooted WiFi issues when SCOPE staff are engaged in in-office phone banking and outreach activities that require internet connection.

When the IT Manager attends meetings, his participation is limited to providing technical support and coordinating with staff members to make sure that technology is accessible and functioning. For instance, the IT Manager prepares the projector, language translation equipment, and any other technology related items needed for the meeting. Staff from all components regularly contact the IT Manager in advance of meetings to ensure that all necessary equipment is available for their use.

However, at times, the IT Manager's assistance to other SCOPE staff has gone beyond providing technical help. For example, the IT Manager has assisted an organizer by providing Excel training to members, apparently at the request of the organizer. The IT Manager has also shown organizers YouTube videos that organizers can share with members to learn certain computer-related skills. Furthermore, the IT Manager has engaged in voluntary phone banking with employees in the unit and has tabled for SCOPE on occasion.

In addition, in approximately 2016 or 2017, the organizing component, with management approval, worked with the IT Manager to create computer training classes that would be taught to community members. The IT Manager developed the course, but he only taught it about once

or twice because members stopped attending. The course was available to members for about 12 to 18 months.

Since about November 2018, the Communications Coordinator has been performing some of the IT-related tasks for the Employer while the IT Manager has been out of the office on leave. The Communications Coordinator spends approximately five hours per week on IT duties, and the remainder of IT responsibilities are allotted to an IT contractor. In this regard, the Communications Coordinator has assisted SCOPE's emPOWER program by providing IT support as needed, furnishing working tablets, and preparing members for how to use the technology. The Communications Coordinator has also served as a liaison between SCOPE staff, primarily organizers, and a software application they use called Sales Force.

II. ANALYSIS AND CONCLUSIONS

A. Confidential Employee Exclusion

1. Board Law

The Board has, with Supreme Court approval, defined confidential employees as "only those employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations." *NLRB v. Hendricks County Electric Membership Corp.*, 454 U.S. 170, 188-189 (1981) (quoting *B.F. Goodrich Co.*, 115 NLRB 722, 724 (1956)). The Board will find an individual is a confidential employee only if she (a) has a close working relationship with an individual who formulates, decides, and effectuates management labor policy; and (b) assists that individual in a confidential capacity by being regularly entrusted with decisions and information regarding the employer's labor policy before that information is made known to those affected by it. *Intermountain Rural Electric Association*, 277 NLRB 1, 4 (1985); *Rhode Island Hospital*, 313 NLRB 343, 351 (1993).

The Board has emphasized that the confidential category is "a narrow one." *Dun & Bradstreet, Inc.*, 240 NLRB 162, 163 (1979). Merely handling confidential records is by itself insufficient to establish confidential status. *Id.* In addition, the party asserting that an individual is a confidential employee bears the burden of proving that claim. *Crest Mark Packing Co.*, 283 NLRB 999 (1987) (citing *Intermountain Rural Electric Association*, *supra*).

2. Application of Board Law to the Executive Assistant Classification

The Executive Assistant has a close working relationship with President/CEO Walton, including daily contact, managing her schedule and travel, and occasionally responding to emails on her behalf when specifically directed to do so. There is no evidence, however, that the Executive Assistant has or would have access to the Employer's labor relations policy data or to confidential material before that material would be available to employees or bargaining representatives. The Executive Assistant does not have access to salary information or information related to disciplinary or grievance actions. The Executive Assistant does not

prepare documents that regular staff do not have access to; she has never attended disciplinary meetings or prepared memoranda regarding labor relations; and she has never substituted for the deputy director or president classifications, both of which have access to confidential documents. The Executive Assistant occasionally has emails filtered to her email account from the President/CEO that include new-employee applications, which the Executive Assistant will forward back to the President/CEO if the application contains a cover letter and a resume and the applicant meets the years-of-experience requirement for the position. However, there is no evidence that the emails filtered to the Executive Assistant contain confidential labor relations information.

In *Bakersfield Californian*, the Board explained the settled rule “that merely having access to confidential information does not establish confidential status.” 316 NLRB 1211, 1212 (1995) (citations omitted). In that case, the secretary of a manager engaged in labor negotiations was *not* a confidential employee even though she may have been exposed to discipline and grievance information before that information was available to the union and she typed the manager’s labor negotiation notes. *Id.* In the instant case, there is no basis to find that the Executive Assistant is exposed to information that the Board considers confidential, or that she assists the President/CEO in a confidential capacity.

Accordingly, I find that the Petitioner has failed to establish that the Executive Assistant is a confidential employee.

3. Application of Board Law to the Administrative Coordinator Classification

At the outset, I note that the Petitioner is precluded from raising and arguing that the Administrative Coordinator is a confidential employee. As noted above, the Petitioner initially contended that the Administrative Coordinator lacks a community of interest with the unit and is a statutory supervisor and an office clerical employee. At the conclusion of testimony and toward the end of the hearing, the Petitioner abandoned its supervisory contention, but asserted for the first time that the Administrative Coordinator is a confidential employee. The Employer argued that the Petitioner should have raised that issue at the beginning of the hearing to give the Employer an opportunity to respond.

Under Section 102.66(d) of the Board’s Rules and Regulations, which addresses preclusions in representation hearings (**bold added**):

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party’s Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board’s statutory jurisdiction to process the petition.

Thus, I find that the Petitioner did not timely raise the issue of whether the Administrative Coordinator is a confidential employee in responding to the Employer's Statement of Position at the outset of the hearing. Therefore, the Petitioner is precluded from raising and arguing this issue.

Moreover, even if the Petitioner were not precluded from raising and arguing the issue, I would find insufficient evidence to establish that the Administrative Coordinator is a confidential employee. The Administrative Coordinator does not have access to documents related to grievances, personnel files, disciplinary records, or labor strategy. She testified that she does not know where those potentially confidential documents are kept, and no evidence suggests otherwise. Although the Administrative Coordinator has access to employees' benefits elections, their payroll records, budgets, and an accounting program called AccuFund, it is notable that the Development Coordinator, a position within the unit, also has access to payroll information when she reviews budgets. Similar to the Executive Assistant, there is no evidence that the Administrative Coordinator views confidential information before that information is made available to the staff or that she acts in a confidential capacity to members of the EMT who effectuate labor policies.⁹ The Board has long held that an employee's access to payroll information and cash funds and her involvement in securing insurance benefits for employees do not mean that she "act[s] in a confidential capacity to officials who determine or effectuate management policies in the field of labor relations." *General Electric Co.*, 120 NLRB 199, 200 (1958).

Accordingly, even if the Petitioner were not precluded from raising this issue, I would find that the Petitioner has failed to establish that the Administrative Coordinator is a confidential employee.

B. Other Asserted Basis to Exclude the IT Manager, Administrative Coordinator, and Executive Assistant from the Unit

To the extent that the Petitioner argues that the Executive Assistant and Administrative Coordinator should be excluded from the unit on the basis that they are clerical employees and that the IT Manager should be excluded on the basis that he is a technical employee, those arguments are addressed in the community of interest analysis below.

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⁹ In making this finding, I have taken into account evidence that in about May 2019, the Strategic Communications Associate told President/CEO Walton that it would be helpful to have someone outside of Deputy Director Medina handle grievances because the Employer does not maintain an established system for resolving grievances. Walton asked the Strategic Communications Associate if the Administrative Coordinator was that person. The Strategic Communications Associate responded that if the Administrative Coordinator was that person, it should be made clear. I have also taken into account evidence that the Administrative Coordinator collected copies of employees' driver's licenses and vehicle insurance and forwarded it to the Deputy Director.

C. Community of Interest

1. Board Law

In accordance with Section 9(b) of the Act, “[t]he Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof[.]” 29 U.S.C. § 159 (b). When making a determination as to whether a petitioned-for unit is “appropriate” under Section 9(b) of the Act, “the Board’s discretion in this area is broad, reflecting Congress’ recognition ‘of the need for flexibility in shaping the [bargaining] unit to the particular case.’” *NLRB v. Action Automotive*, 469 U.S. 490, 494 (1985) (quoting *NLRB v. Hearst Publications, Inc.*, 322 U.S. 111, 134 (1944)).

When determining an appropriate unit, the Board delineates the grouping of employees within which freedom of choice may be given collective expression. At the same time, it creates the context within which the process of collective bargaining must function. Therefore, each unit determination must foster efficient and stable collective bargaining. *Gustave Fisher, Inc.*, 256 NLRB 1069 (1981).

The Act does not require a petitioner to seek representation of employees in the most appropriate unit, but only in *an* appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996) (emphasis added). Thus, the Board first determines whether the unit proposed by a petitioner is appropriate. *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988). In order to find that a petitioned-for unit is appropriate where a party seeks to add employees to the petitioned-for unit, the Board must determine “whether the interests of the group sought are *sufficiently distinct* from those of other employees to warrant the establishment of a separate unit.” *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 5, 7 (Dec. 15, 2017) (emphasis in original).

When deciding whether the unit sought in a petition is appropriate, the Board focuses on whether the employees share a “community of interest.” *Wheel Island Gaming*, 355 NLRB 637, 637 (2010); *NLRB v. Action Automotive*, 469 U.S. 490, 494 (1985). In turn, when deciding whether a group of employees shares a community of interest, the Board considers whether: (1) the employees sought are organized into a separate department; (2) have distinct skills and training; (3) have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; (4) are functionally integrated with the employer’s other employees; (5) have frequent contact with other employees; (6) interchange with other employees; (7) have distinct terms and conditions of employment; and (8) are separately supervised. *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 11 (citing *United Operations, Inc.*, 338 NLRB 123, 123 (2002)). With regard to organization of the plant, the Board has made clear that it will not approve of fractured units – that is, combinations of employees that are too narrow in scope or that have no rational basis. *Seaboard Marine*, 327 NLRB 556 (1999). All relevant factors must be weighed in determining community of interest, including the Board’s established guidelines for appropriate unit configurations in specific industries. *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 11.

Under current Board law, in contrast to the Board's prior standard under *Specialty Healthcare*, "at no point does the burden shift to the employer to show that any additional employees it seeks to include share an overwhelming community of interest with employees in the petitioned-for unit." *PCC Structural, Inc.*, 365 NLRB No. 160, slip op. at 11 (overruling the Board's previous decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), *enfd.* 727 F.3d 552 (6th Cir. 2013)). Rather, "[p]arties who believe that a petitioned-for group improperly excludes employees whose interests are not sufficiently distinct from those of employees within the proposed group will, of course, introduce evidence in support of their position." *PCC Structural, Inc.*, 365 NLRB No. 160, slip op. at 11.

2. The Positions of the Parties

The Employer argues that the unit of employees sought by the Petitioner arbitrarily excludes three classifications that function under common departments and areas of work as the employees in the unit. The Employer notes that since there are only about 14 people on its permanent staff, all of the staff play a role in reaching the Employer's community-organizing goals. The Employer maintains that employees in the petitioned-for unit do not have a separate community of interest from the disputed classifications given that they regularly have interchange and contact with the IT Manager, Administrative Coordinator, and Executive Assistant. The Employer points out that the employees in the petitioned-for unit and the three at-issue classifications function under common organizational goals, common work hours, common salary structure, and common workplace policies and procedures. The Employer seeks to ensure that all of its non-managerial/non-supervisory staff have an equal right to unionize.

The Petitioner argues that the classifications it seeks to include in a unit share a very clear community of interest and are engaged in functions distinctly differing from the functions of the three disputed classifications. The Petitioner points out that the classifications in the unit participate in the program team to develop and carry out core SCOPE goals, whereas the Executive Assistant, Administrative Coordinator, and IT Manager do not participate in program team meetings, other than providing logistic support. The Petitioner contends that all three disputed classifications are housed within the administrative component, noting that the Development Coordinator is indisputably part of the program team meetings even though she seems to have some overlap with administrative staff more than some of the other staff. The Petitioner also argues that there is little functional integration between the three disputed classifications and the employees in the unit. More specifically, the Senior Organizer and Strategic Communications Associate testified that they have limited interactions with the three disputed classifications.

With respect to the Executive Assistant and Administrative Coordinator, the Petitioner argues that they are office clericals who carry out administrative duties and make sure that things like human resources, payroll, and ordering supplies and food are in order. Furthermore, the skills and functions of the Administrative Coordinator and Executive Assistant are largely administrative and those skills and functions differentiate them from the employees in the unit. The Petitioner acknowledges that the Executive Assistant has recently been involved with the

emPOWER program and has contact with community members. The Petitioner notes that responsibility only started in June 2019 and has been a limited feature of the Executive Assistant's near 11-year tenure with SCOPE. The Petitioner also contends that dispatching the street action team does not put the Executive Assistant in a similar job classification as the organizers who are actually developing the messaging and the campaign strategy in program team meetings that the Executive Assistant does not regularly attend. Petitioner cites to *L.M. Berry & Co.*, 198 NLRB 217 (1972), a case involving a unit of sales employees, for the proposition that just because clericals have some contact with employees in the organization who are carrying out the mission, where most of the contact is administrative, there is a basis for excluding clericals from the unit.

With respect to the IT Manager, the Petitioner argues that he lacks a community of interest with the unit insofar as he uses specialized skills and independent judgment to carry out purely technological functions. The Petitioner stresses that he is the only employee with his particular job function and the only employee working on the first floor of the building. Concerning the computer class that the IT Manager prepared for the community members, the Petitioner asserts this is a one-off situation and not a regular part of the IT Manager's duties. The Petitioner maintains that the IT Manager's role is currently being filled in significant part by an outside contractor.

3. Application of Board Law to Instant Case

Based on the record evidence, I find that the evidence does not establish that the employees in the petitioned-for unit share a community of interest sufficiently distinct from the Executive Assistant, Administrative Coordinator, or IT Manager to warrant the exclusion of these three disputed employee classifications from the unit. As discussed below in more detail, in reaching this conclusion, I rely on evidence of functional integration, contact between those in the unit and the disputed classifications, overlap of certain job functions, common terms and conditions of employment, common supervision with respect to the three disputed classifications and at least one classification in the unit, and the lack of sufficient evidence that the employees in the petitioned-for unit are organized into a separate department or that they have distinct skills or training.¹⁰ Therefore, I shall direct an election in a unit including the Executive Assistant, Administrative Coordinator, and IT Manager.

¹⁰ The issues whether the Executive Assistant and Administrative Coordinator are office clericals and whether the IT Manager is a technical employee are duly considered in the context of the community-of-interest analysis. I note that the unit sought by the Petitioner does not exclude technical employees. Furthermore, although the Petitioner seeks to exclude office clericals, the Employer argues that excluding the Executive Assistant and the Administrative Coordinator on the basis that they are clerical employees is arbitrary and inappropriate. To the extent that the parties do not agree whether office clerical employees are appropriately excluded from the unit sought, a community-of-interest analysis shall resolve the dispute with respect to the Executive Assistant and the Administrative Coordinator. See generally *L.M. Berry and Co.*, 198 NLRB 217, 219 (1972) (Board's exclusion of clericals based on community of interest analysis, not merely based on employees' status as clerical employees). I further find, as an initial matter, that *L.M. Berry and Co.*, supra, does not support the Petitioner's position of excluding the three disputed classifications because that case involved a unit of salespersons excluding clericals and precedent supported finding a unit of salespersons appropriate. Furthermore, the salespersons had several important distinct interests that are not analogous to the distinctions existing between classifications in the unit here and the

Organization into a Separate Department

An important consideration in any unit determination is whether the proposed unit conforms to an administrative function or grouping of an employer's operation. Thus, for example, generally the Board would not approve a unit consisting of some, but not all, of an employer's production and maintenance employees. See, *Check Printers, Inc.* 205 NLRB 33 (1973). However, in certain circumstances the Board will approve a unit in spite of the fact that other employees in the same administrative grouping are excluded. *Home Depot USA*, 331 NLRB 1289, 1289 and 1291 (2000).

In this case, with one significant caveat, the unit sought by the Petitioner largely conforms to departmental components of the Employer. Specifically, all but one of the employees in the petitioned-for unit work in components other than the administrative component; they work in the organizing, research/communications, and training components. All of the disputed classifications, in contrast, work in the administrative component. An exception exists concerning the Development Coordinator, which is a classification that is included in the petitioned-for unit. On one hand, evidence suggesting that the Development Coordinator is part of the administrative component includes that she attends administrative component meetings, attends administrative team building days, works in an office space that is adjacent to the Administrative Coordinator and Executive Assistant, she is supervised by the supervisor for the administrative component, and is considered by some employees to be part of the administrative component. The Development Coordinator also interacts with and has on one occasion substituted for the Administrative Coordinator in preparing a budget. On the other hand, there is an organizational chart in the record suggesting that the Development Coordinator is in a separate component, a development component.¹¹ It is clear, additionally, that the Development Coordinator attends program team meetings that others in the administrative component do not attend.

Given these circumstances, the evidence does not conclusively establish that the classifications in the petitioned-for unit are fully organized into departments separate from the three disputed classifications. Therefore, this factor does not support finding that the classifications in the petitioned-for unit share a community of interest sufficiently distinct from those of the Executive Assistant, Administrative Coordinator, or IT Manager to warrant a separate unit.¹²

classifications the Petitioner seeks to exclude. In addition, the Board in *LM. Berry and Co.* applied a standard inconsistent with the Board's current *PCC Structural*s standard, insofar as it did not require a finding that the petitioned-for unit share a community of interest sufficiently distinct from the clerical classifications sought to be added such that a separate unit was warranted.

¹¹ I note there was some question in the record about the accuracy of the organizational chart.

¹² Even if this factor favored excluding the three disputed classification, I would find that the remaining evidence supports finding that the disputed classifications should be included, pursuant to *PCC Structural*s, supra.

The Nature of Employee Skills, Training, and Functions

Regarding distinct skills, training, and functions, this analysis examines whether disputed employees can be distinguished from one another on the basis of job functions, duties, or skills. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in the petitioned-for unit. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that disputed employees work together as a crew, support a finding of similarity of functions. Evidence that disputed employees have similar requirements to obtain employment; that they have similar job descriptions or licensure requirements; that they participate in the same employer training programs; and/or that they use similar equipment supports a finding of similarity of skills. *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penny Company, Inc.*, 328 NLRB 766 (1999); *Brand Precision Services*, 313 NLRB 657 (1994); *Phoenician*, 308 NLRB 826 (1992). Where there is also evidence of similar terms and conditions of employment and some functional integration, evidence of similar skills and functions can lead to a conclusion that disputed employees must be in the same unit, in spite of lack of common supervision or evidence of interchange. *Phoenician*, *supra*.

Here, the record does not reveal precisely what skills and training employees in the unit possess as compared to the three disputed classifications. There is no evidence conclusively showing what education level or requirements an individual must have to work in any position at the Employer. The Executive Assistant position appears to require strong organization, communication, and scheduling skills. Like employees in the petitioned-for unit, the Executive Assistant must have the ability to communicate regarding the Employer's organization and mission with various stakeholders and members of the public. With respect to training, I note that the Senior Organizer and the Executive Assistant attended a training by Liberty Hill prior to launching the emPOWER program at SCOPE. Thus, the Executive Assistant has attended the same training as an employee in the unit at least on one occasion.

The record reveals that the Executive Assistant performs certain functions that are performed by employees in the petitioned-for unit. For example, in connection with the emPOWER program, the Executive Assistant is engaged in organizing and overseeing a team of seasonal employees who are engaged in canvassing activities, functions she shares with unit employees from the organizing component. As noted above, two days per week, the Executive Assistant is the SCOPE employee present when the team returns to the office after close of business; on the other two days, a member of the organizing component, either the Senior Organizer or the Organizing Director, is present when the team returns. Being present when the team returns involves answering team members' follow-up questions and helping them input data into a computer based on their activities. The Executive Assistant also trains community members on how to fill out applications using a tablet and answers any questions they have before canvassing, which are functions also performed by the Senior Organizer and Communications Coordinator.

Thus, the evidence indicates that classifications in the unit possess similar skills and functions to those that the Executive Assistant uses when working on emPOWER. On the other

hand, I note that staff in the components of organizing and research/communication have the additional functions of developing messaging, developing campaign strategies, recruiting members and leads, creating original content, and pursuing leads to achieve benchmarks in their organizing efforts. In this way, there is evidence that employees in the unit have elevated responsibilities related to messaging, political strategizing, and fulfilling predetermined organizing goals. Furthermore, the Executive Assistant is tasked with administrative duties that are not required of employees in the unit, including processing schedule requests, onboarding employees, and planning logistical aspects of meetings. Because there is evidence that the classifications in the unit have skills and functions distinct from the Executive Assistant, these factors arguably support excluding the Executive Assistant from the unit. However, given the Executive Assistant's involvement with emPOWER, the sustainability summit, and the Employer's other organization and outreach activities, the evidence overall regarding the skills, training, and functions factors does not support finding that the classifications in the petitioned-for unit share a community of interest sufficiently distinct from the Executive Assistant to warrant a separate unit; the skills and functions of the Executive Assistant that are distinct from the unit do not sufficiently outweigh those that the Executive Assistant shares with the unit.

With respect to the Administrative Coordinator, two thirds of her time is spent on budgeting. In performing budgeting work, she works closely with the Development Coordinator, sharing information and reviewing budgets. While the record does not reveal all of the Development Coordinator's responsibilities, the Administrative Coordinator clearly shares budgeting skills that the Development Coordinator possesses and uses. With respect to training, the Administrative Coordinator attended two trainings related to accounting and HR management, which none of the employees in the unit attended. The Administrative Coordinator has certain human resource functions related to payroll processing and onboarding employees; these account for one third of her time. The evidence shows that the Administrative Coordinator is less directly involved in organizational activities than the Executive Assistant. However, she does still share certain functions with employees in the petitioned-for unit. For example, the Organizer trained the Administrative Coordinator on how to canvass on behalf of SCOPE, then they both canvassed together on one or two days. Although I note the evidence of distinct organizing and messaging skills and functions in the unit, in light of the evidence that the Administrative Coordinator has performed at least some of the same functions (preparing budgets and canvassing with an Organizer), I do not find that the skills and functions of those in the unit are *sufficiently* distinct from those of the Administrative Coordinator to warrant establishing a separate unit without the Administrative Coordinator.

The IT Manager is responsible for technology-related functions that generally are not shared by others in the unit.¹³ Further, the employees in the unit possess messaging and political strategy skills and functions that differentiate them from the IT Manager. This would support a

¹³ With respect to the Petitioner's assertion that the IT Manager is a technical employee, the record evidence is insufficient to determine if the IT Manager is an individual "whose work is of a technical nature involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses." *Beverly Manor Convalescent Centers*, 264 NLRB 966, 968 (1982) (citing/quoting references omitted). The record does not reflect what level of judgment and training the IT Manager uses in working for SCOPE.

conclusion that the employees in the unit share a community of interest sufficiently distinct from the IT Manager to warrant a separate unit. However, there is evidence of shared skills and functions between the IT Manager and the petitioned-for unit insofar as the Communications Coordinator has been performing some of the IT Manager's work while he has been on leave. Also, the IT Manager has engaged in phone banking with employees in the unit and has tabled for SCOPE on occasion alongside unit employees. Therefore, I conclude that there is insufficient evidence to establish that the employees in the petitioned-for unit have skills, training, and functions sufficiently distinct from the IT Manager to warrant a finding that the petitioned-for unit constitutes a separate appropriate unit without inclusion of the IT Manager.

Interchangeability and Contact Among Employees

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange "may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills." *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Resources Associates*, 301 NLRB 400, 401 (1991), citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1081).¹⁴

In this case, there is no evidence in the record of interchange between the Executive Assistant and employees in the petitioned-for unit. Therefore, the lack of interchange supports finding that the employees in the unit share a community of interest sufficiently distinct from the Executive Assistant to warrant a separate unit. There is evidence, however, of significant contact between the Executive Assistant and the employees in the unit. For example, the Executive Assistant had contact with organizers and the Development Coordinator in working on the ad hoc committee to plan the sustainability summit. The contact between the Executive Assistant and the unit employees is further evidenced by their collaboration on the emPOWER program, which is a temporary program extending to September 2019. The record further indicates that there are occasions when SCOPE staff are engaged in tabling, phone banking, and contacting members, in which the Executive Assistant works side by side and is engaged in the same functions as the employees in the unit. Furthermore, the Executive Assistant has regular contact with employees in the unit during the onboarding process. Accordingly, the degree of contact between the Executive Assistant and employees in the petitioned-for unit does not support finding that the employees in the unit share a community of interest sufficiently distinct from the Executive Assistant to warrant a separate unit.

Regarding the Administrative Coordinator, there similarly is no evidence of interchange between the Administrative Coordinator and employees in the petitioned-for unit. Therefore, the lack of interchange supports finding that the employees in the unit share a community of interest sufficiently distinct from the Administrative Coordinator to warrant a separate unit. However,

¹⁴ I note that there is no evidence of permanent transfers between the employees in the unit and the employees the Petitioner seeks to exclude.

there is evidence of frequent contact between the Administrative Coordinator and unit employees. For example, the Administrative Coordinator has frequent contact with the Development Coordinator in preparing budgets for grants, which accounts for two thirds of her time. The Administrative Coordinator also has regular contact with staff in all components insofar as staff inquire with the Administrative Coordinator as to how much money can be spent on projects. Moreover, the contact factor considers the amount of work-related contact among employees in the unit, including whether they work beside one another, and it is important to compare the amount of contact employees in the unit have with one another. See for example, *Casino Aztar*, 349 NLRB 603, 605-606 (2007). Here, the unit includes Training Associates and Organizer classifications, and there is significant evidence that at least one Organizer has very rarely interacted with the Training Associate in any meaningful way. For these reasons, as with the Executive Assistant, the frequent contact between the Administrative Coordinator and the unit employees does not support finding that the employees in the unit share a community of interest sufficiently distinct from the Administrative Coordinator to warrant a separate unit.

Regarding the IT Manager, there is no evidence of interchange between the IT Manager and employees in the petitioned-for unit. However, there is evidence of frequent contact between the IT Manager and unit employees. Specifically, the record reveals that the IT Manager is in regular contact with the employees in the unit to assist with their technological needs, troubleshoot problems, and set up equipment for meetings. Prior to the IT Manager's leave of absence, he was the sole and primary contact for staff on IT issues. In addition, the IT Manager has engaged in voluntary phone banking with employees in the unit and has tabled for SCOPE on occasion alongside unit employees. The fact that the IT Manager works on the first floor while all other staff work on the second floor does not diminish the strong evidence of contact, given that employees in the unit are often performing work out of the office, the many modes of electronic communication, and evidence of in-person contact in meeting rooms and the computer lab. Thus, as with the two other contested classifications, although the lack of interchange supports a conclusion that the employees in the unit share a community of interest sufficiently distinct from the IT Manager to warrant a separate unit, the frequent level of contact supports a conclusion that the employees in the unit do not share a community of interest sufficiently distinct from the IT Manager to warrant a separate unit.

Common Supervision

In examining whether the employees in dispute are commonly supervised, most important is the identity of employees' supervisors who have the authority to hire, to fire or to discipline employees (or effectively recommend those actions) or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work, and providing guidance on a day-to-day basis. *Executive Resources Associates, Inc.*, supra at 402; *NCR Corporation*, 236 NLRB 215 (1978). Common supervision weighs in favor of placing the employees in dispute in one unit. However, the fact that two groups are commonly supervised does not mandate that they be included in the same unit, particularly where there is no evidence of interchange, contact, or functional integration. *United Operations*, supra at 125. Similarly, the fact that two groups of employees are separately supervised weighs in favor of finding against their inclusion in the same unit. However, separate supervision does not mandate

separate units. *Casino Aztar*, supra at 607, fn. 11. Rather, more important is the degree of interchange, contact, and functional integration. *Id.* at 607.

In this case, all three of the disputed classifications are supervised by Deputy Director Medina.¹⁵ Deputy Director Medina also supervises the Development Coordinator, who is in the petitioned-for unit. Thus, the evidence supports finding common supervision between the disputed classifications and at least one employee in the petitioned-for unit. Moreover, it bears noting that Deputy Director Medina also supervises unit employees in the organizing component when Director Pruitt is on vacation, but this only happens one week per year. Furthermore, to the extent that the disputed classifications do not share common direct supervision with unit employees other than the Development Coordinator, this fact is no different than the lack of common supervision among unit employees insofar as the organizing component is supervised by Director Pruitt, the research/communications component is supervised by Director Muraida, and the Development Coordinator is supervised by Deputy Director Medina.

Thus, this factor weighs against finding that the employees in the unit share a community of interest sufficiently distinct from the Executive Assistant, the Administrative Coordinator, or the IT Manager to warrant a separate unit.

Degree of Functional Integration

Functional integration refers to when employees' work constitutes integral elements of an employer's production process or business. Thus, for example, functional integration exists when employees in a unit sought by a union work on different phases of the same product or as a group provides a service. Another example of functional integration is when the Employer's work flow involves all employees in a unit sought by a union. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *Transerv Systems*, 311 NLRB 766 (1993). On the other hand, if functional integration does not result in contact among employees in the unit sought by a union, the existence of functional integration has less weight.

Based on the facts described above, the evidence supports finding that the Executive Assistant is functionally integrated with the employees in the unit. The Executive Assistant plays a large role in coordinating the logistics of all external and internal meetings that employees in the unit conduct on a regular basis to carry out the Employer's organizing work; these meetings are of crucial importance for strategy collaboration among staff, base-building, and the training and retention of members, and the Executive Assistant plays an integral logistics role in arranging the meetings and helping members attend. The Executive Assistant's functional integration is further evidenced by her work on the emPOWER program, the sustainability summit, and the annual membership drive; employees in the unit shared in tasks related to implementing these programs/events. The Executive Assistant is also integrated with staff in the research/communications component when she shares pictures and content to be used

¹⁵ The Executive Assistant also reports to the President/CEO.

on social media and when she works with them to get approvals from the President/CEO on content. The Executive Assistant is further integrated with the organizing component when organizers refer members to her to sort out issues with receiving gifts or paychecks.

The evidence likewise supports reaching the same conclusion with respect to the Administrative Coordinator, based on her functional integration with the Development Coordinator in the preparation of budgets and submitting grant proposals as detailed above.

Furthermore, the evidence also supports finding that the IT Manager is functionally integrated with the employees in the unit. The record reflects that the applications Sales Force and PowerBase are of central importance to the work performed by organizers and communications/research staff. The fact that the IT Manager provides all staff with information on how to use these programs and is the point of contact for troubleshooting technology issues as they arise supports finding functional integration. The IT Manager is not merely behind the scenes, working away and separate from the unit employees. Instead, he is in direct contact with unit employees to service their technological needs and to set up technology that staff use in organizing activities. The IT Manager has, moreover, provided Excel training to two members, apparently at the behest of an organizer, and he has shared some YouTube videos that organizers can use to further train members in Excel. A final more limited, but clear, example of functional integration is the IT Manager's creation of a computer class that members attended; the purpose of this course was to educate and empower community members, and it was designed in direct collaborating with staff in the organizing component.¹⁶

Accordingly, this factor weighs against finding that the employees in the unit share a community of interest sufficiently distinct from the Executive Assistant, Administrative Coordinator, or the IT Manager to warrant a separate unit.

Terms and Conditions of Employment

Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion (for example hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms of employment that might be described in an employee handbook. However, the fact that employees share common wage ranges and benefits or are subject to common work rules does not warrant a conclusion that a community of interest exists where employees are separately supervised, do not interchange and/or work in a physically separate area. *Bradley Steel, Inc.*, 342 NLRB 215 (2004); *Overnite Transportation Co.*, 322 NLRB 347 (1996). Similarly, sharing a common personnel system for hiring, background checks and training, as well as the same package of benefits, does not warrant a conclusion that a community of interest exists where two classifications of employees have little else in common. *American Security Corporation*, 221 NLRB 1145 (1996).

¹⁶ The fact that the class was taught but once or twice several years ago detracts from the overall significance of this evidence.

In the instant case, unit employees share common terms and conditions of employment with the Executive Assistant, Administrative Coordinator, and the IT Manager. These include the same salary structure, the same benefits options, the same applicable policies and procedures which are contained in an employee handbook, the same work location, and, as noted, the same supervisory hierarchy (the EMT). Further, there is evidence that all staff across all components are required to be available at certain times to support campaigns and programs by canvassing, phone banking, attending events, or engaging in other organizing-related activities. However, there is evidence that the performance of organizers is measured using certain numerical metrics which are not used in evaluating the three disputed classifications, but there is no evidence that these metrics are used in evaluating the performance of the Training Associate or classifications in the research/communications component included in the unit.

Accordingly, this factor also weighs against finding that the employees in the unit share a community of interest sufficiently distinct from the Executive Assistant, Administrative Coordinator, or the IT Manager to warrant a separate unit.

Summary of Community of Interest Factors Analysis

Based on the foregoing, considering all the community of interest factors, the evidence does not establish that the employees in the petitioned-for unit share a community of interest sufficiently distinct from the Executive Assistant, Administrative Coordinator, or the IT Manager to warrant a separate unit. In reaching this conclusion, I rely upon the significant amount of functional integration and contact between those in the unit and the disputed classifications, as well as the overlap of certain job functions, common terms and conditions of employment, and the common supervision with respect to the three disputed classifications and at least one classification in the unit. Because the evidence does not conclusively establish that the classifications in the petitioned-for unit are fully organized into departments separate from the three disputed classifications, the organization factor does not support finding the petitioned-for unit to be an appropriate separate unit. The lack of interchange between employees in the unit and the three disputed classifications is the only factor that clearly favors finding the petitioned-for unit to be an appropriate separate unit. However, I do not find the lack of interchange alone to be sufficient to establish that the employees in the petitioned-for unit share a community of interest sufficiently distinct from the Executive Assistant, Administrative Coordinator, or the IT Manager to warrant a separate unit.

CONCLUSION

For the reasons detailed above, I find that the Petitioner has not met its burden of establishing that the Executive Assistant or the Administrative Coordinator are confidential employees who must be excluded from the petitioned-for unit on that basis. Furthermore, having carefully weighed the community-of-interest factors in light of *PCC Structural*, supra, I find that the Petitioner has failed to establish that the employees in the petitioned-for unit share a community of interest sufficiently distinct from the Executive Assistant, Administrative Coordinator, and IT Manager to warrant a separate unit. Accordingly, I find that the Executive Assistant, Administrative Coordinator, and IT Manager must be included in the unit.

Thus, based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated and I find that the Employer is engaged in commerce within the meaning of Section 2(6) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹⁷
3. The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. The parties stipulated and I find that there is no collective-bargaining agreement covering any of the employees in the petitioned-for unit, and there is no contract bar, or any other bar, to this proceeding.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit (the Unit) appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time Development Coordinators, Strategic Communications Associates, Training Associates, Research and Policy Associates, Communications Coordinators, Community Organizers, Senior Organizers, Executive Assistants, Administrative Coordinators, and IT Managers.

Excluded: All other employees, guards, managers, confidential employees, and supervisors as defined by the Act, as amended.

During the hearing when the Petitioner was asked if it wished to proceed to an election if the Regional Director ordered an election in a unit different than the petitioned-for unit, the Petitioner indicated that it wished to proceed to an election in any unit found appropriate. Thus, I will direct an election in the Unit above, which includes approximately 10 employees.¹⁸

¹⁷ The Employer, Strategic Concepts Organizing and Policy Education, a California nonprofit organization, with its principal offices located in Los Angeles, California, is engaged in providing community education and base-building in low-income communities within Los Angeles, California. During the past twelve (12) months, a representative period, the Employer derived gross revenues in excess of \$250,000, and purchased and received goods valued in excess of \$5,000 directly from enterprises outside of the State of California.

¹⁸ The Petitioner's showing of interest is sufficient to direct an election in the Unit found appropriate.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the Unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **International Association of Machinists and Aerospace Workers District Lodge 947**.

A. Election Details

The election will be held on **Thursday, August 8, 2019**¹⁹ from **10:00 a.m. to 11:00 a.m.**, in the first floor kitchen/child care room of the Employer's facility located at 1715 West Florence Avenue, Los Angeles, California 90047.²⁰

B. Voting Eligibility

Eligible to vote are those in the Unit who were employed during the payroll period ending **Wednesday, July 24, 2019**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees in the Unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

¹⁹ Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the Employer must file, and serve on the parties, the voter list with the Regional office. In the instant case, the Petitioner has waived its right to have the voter list for the 10-day period or for any shorter period of time. The Petitioner has thus waived its right to file objections to the election based on the fact that it will not have the voter list for the 10-day period.

²⁰ At the hearing, the Employer took the position that a mixed manual/mail ballot election was necessary to allow the IT Manager to vote by mail given that he is currently on medical leave. However, based on the arguments presented by the parties, I do not find a sufficient basis to direct an election that deviates from the standard manual election.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this Decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **August 5, 2019**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this Decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the Unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the Unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. **The Employer must post copies of the Notice at least 3 full working days prior**

to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this Decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: August 1, 2019



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